Remarks

Applicants have canceled claim 37. Claims 34-36, 38 and 40-41 are pending. Applicants have added new claims 68-73.

The Examiner has alleged, in essence, that "the step of measuring temperature" is not distinct in time from the "ablating" step in Applicants' claims and therefore these steps "are fulfilled by the method of Rittman." (Office action at page 2). Applicants have amended claim 34 and added new claims 68-73 to make clear that the "temperature measurement" step is distinct from the "ablating" step of the method.

Support for the amendment to claim 34 and the new claims is found in the specification as a whole and, for example, page 34, line 3 - page 36, line 5 of Applicants' specification as filed on February 18, 2000. (All references to the specification in this document are to the application as filed).

No new matter is introduced by the amendments.

Applicants note that the Section 102 rejections of claims 34-36 and 38 from the Office action of January 12, 2006, appear to have been replaced with obviousness rejections by the Office action of September 26, 2006. Applicants respectfully request confirmation that the earlier anticipation rejections have been withdrawn.

Rejections under 35 U.S.C. § 103(a)

Claims 34-38 and 40 stand rejected as obvious over Rittman in combination with Swanson.

In the Office action of September 26, 2006, the Examiner alleges:

> There is no exclusion in the claims which would prevent the temperature method to be used to characterize the tissue as "sufficiently ablated" for example, wherein the ablation would continue, in response to the characterization of the tissue being "insufficiently ablated." . . . In other words,

> as applicant has disclosed no particular duration of either of the steps argued, nor any particular interval that must exist between the cessation of one step and the commencement of the next, the step of measuring the temperature during one moment of ablation determines the treatment parameters (e.g. whether or not to continue ablating) during the step of the next moment of ablation. (Office action at page 2).

The Examiner seems to be suggesting that Applicants' claim 34 does not sufficiently differentiate the alleged "temperature measurement" step from the "ablation."

Certain embodiments of Applicants' specification are directed at a "control system" which "preferably activates the ablating elements in a predetermined manner." (page 34, lines 3-4 of Applicants' specification as filed). The control system first takes into consideration a number of different variables (some measured, others calculated or based on clinical data) and then uses them to select an appropriate ablating technique before the ablation begins. Although the ablation "may be controlled based on temperature measured at the temperature sensors," (page 34, lines 16-17), certain embodiments of the control system "may also be configured to measure a temperature response of the tissue . . . to provide a tissue characterization which can be used to select the appropriate ablation technique." (page 34, lines 25-28).

Applicants have amended claim 34 and added new claims 68-73 to make it clear that the alleged "temperature measurement" step of the claims is distinct from the "ablation" step. No new matter is introduced by these amendments. The specification notes that when assessing the temperature response, the amount of energy delivered to the tissue may be used to characterize the tissue (page 35, lines 25-27). The temperature response and tissue characterization steps are recited on page 35, lines 4-27. Ablation which stops after a predetermined time interval is described at page 35, line 30 to page 36, line 3.

Applicants submit that the distinct temperature measuring step in the claims as amended is neither taught nor suggested by Rittman or Swanson. Therefore, claims 34-36, 38, 40 and 68-73 are patentable over the cited combination.

Claim 41 stands rejected as obvious over Rittman in combination with Swanson and further in view of Ben Haim.

As noted above, Applicants have amended claim 34 to make it clear that the alleged "temperature measurement" step of the claims is distinct from the "ablation" step. Since Ben Haim does not teach or suggest a "temperature measurement" step distinct from the albation step, claim 41 is patentable over the additional Ben Haim reference. For at least the same reasons, new claim 73 is patentable over the cited combination. The rejection based on obviousness should be withdrawn.

Obviousness-type double patenting rejections

Claims 34-38, 40 and 41 stand rejected as being unpatentable over claims in US Patents 6,805,129 and 6,645,202.

In response to these rejections, Applicants have submitted a terminal disclaimer.

Applicants request withdrawal of the Examiner's rejections and submit that the application is in condition for allowance. Timely notification of allowability is requested.

Applicants have included a Request for Continued Examination, a three (3) month extension of time request and the appropriate fee with this response. No additional fees, requests for extension of time, other petitions, additional claim fees, or any other fees are believed to be necessary to enter and consider this paper. If, however, any extensions of time are required or any fees are due in order to enter or consider this paper or enter or consider any paper accompanying this paper, including fees for net addition of claims, Applicants hereby request any extensions or petitions necessary and the Commissioner is hereby authorized to charge our Deposit Account No. 50-1129 for any fees. If there is any variance between the fee submitted and any fee required, or if the payment or fee payment information has been misplaced or is somehow insufficient to provide payment, the Commissioner is hereby authorized to charge or credit Deposit Account No. 50-1129.

Respectfully submitted,

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